Supreme Court, U.S.
FILED
05-478 OCT 10 2005
OFFICE OF THE CLERK

No. 05-

IN THE

Supreme Court of the United States

BRANDON L. BRYANT,

Petitioner,

v.

COMPASS GROUP USA, INC.,
Individually and d/b/a CHARTWELLS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN WERNER
REAUD, MORGAN & QUINN, L.L.P.
801 Laurel Street
P. O. Box 26005
Beaumont, TX 77720-6005
(409) 838-1000

KIRK L. PITTARD*
DURHAM & PITTARD, LLP
P.O. Box 190310
Dallas, Texas 75219
(214) 946-8000

Attorneys for Petitioner

* *Counsel of Record*

197126

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Under Title VII of the Civil Rights Act of 1964, does the standard of review concerning a motion for judgment as a matter of law require consideration of evidence supporting the claimant's prima facie case of discrimination?

2. Does it violate the Seventh Amendment right to trial by jury to require a plaintiff to choose between a remittitur of damages or a new trial?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 14.1(b) of the Rules of the Supreme Court of the United States.

1. Brandon L. Bryant, *Petitioner*

2. Kirk L. Pittard, *Lead Counsel for Petitioner*

3. John Werner, *Co-Counsel for Petitioner*

4. Compass Group USA, Inc., Individually and d/b/a Chartwells, *Respondent*

5. Kerry E. Notestine
   Deke W. Bond
   Littler Mendelson, P.C.
   Chevron Tower, Suite 1900
   1301 McKinney Street
   Houston, Texas 77010
   (713) 951-9400
   FAX (713) 951-9212
   Counsel for Respondent

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	vi
TABLE OF APPENDICES	x
OPINION BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	3
BACKGROUND FACTS	3
REASONS FOR GRANTING THE PETITION	9
I. This Court should grant Certiorari because the Fifth Circuit's decision, which essentially requires a "pretex plus" analysis, conflicts with this Court's decision in *Reeves v. Sanderson Plumbing Prods., Inc.*, regarding the standard for overcoming a judgment as a matter of law in the context of a claim involving discriminatory and retaliatory termination.	9

Contents

Page

1. Claims for Discrimination Under Title VII. 9

2. *Reeves v. Plumbing Products, Inc.* 12

II. This Court should grant Certiorari because there is a split among the federal circuit courts regarding whether the standard of review concerning evidence of discriminatory and retaliatory termination requires consideration of the evidence supporting the plaintiff's prima facie case of discrimination. 15

III. This Court should grant Certiorari because the Petitioner properly raised an important question of constitutional law that has not yet been decided by this Court regarding whether it violates the Seventh Amendn ent right to trial by jury to require a party to choose between remittitur of damages or a new trial. 16

1. The constitutionality of the remittitur/ new trial "option" has never been adjudicated by this Court. 17

2. The requirement to accept a remittitur of damages or a new trial is unconstitutional under the "re-examination" clause of the Seventh Amendment. 19

Contents

		Page
3.	Remittitur impinges a plaintiff's right to trial by jury.	20
CONCLUSION		23

TABLE OF CITED AUTHORITIES

Cases: *Page*

Ash v. Tyson Foods, Inc.,
129 Fed. Appx. 529 (11th Cir. 2005) 15

Beardmore v. Carrington,
95 Eng. Rep. 790 (1764) 18

Bryant v. Compass Group USA, Inc.,
413 F.3d 471 (5th Cir. 2005) 1, 16, 17

Byers v. Dallas Morning News, Inc.,
209 F.3d 419 (5th Cir. 2000) 10

Chuang v. University of California Davis, Bd. Of Trustess,
225 F.3d 1115 (9th Cir. 2000) 11

Dimick v. Schiedt,
293 U.S. 474, 55 S. Ct. 296 (1935) 17, 18, 19

EEOC v. Joe's Stone Crabs, Inc.,
296 F.3d 1265 (11th Cir. 2002) 15

Green v. School Bd. of Hillsborogh County,
25 F.3d 974 (11th Cir. 1994) 15

Haynes v. Pennzoil Co.,
207 F.3d 296 (5th Cir. 2000) 10

Hetzel v. Prince William County,
523 U.S. 208, 118 S. Ct. 1210 (1998) 19

Cited Authorities

	Page
Lionel Barber & Co. v. Deutsche Bank, (1919) App. Cas. 304	20
McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973)	9, 10
McKissack v. Wal-Mart Stores, Inc., No. SA-02-CA-0043-RF, 2004 WL 212930 (W.D. Tex. Jan. 26, 2004)	17
Miller v. EBY Realty Group LLC, 396 F.3d 1105 (10th Cir. 2005)	15
Palasota v. Haggar Clothing Co., 342 F.3d 569 (5th Cir. 2003)	15
Raggs v. Mississippi Power & Light Co., 278 F.3d 463 (5th Cir. 2002)	16
Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 120 S. Ct. 2097 (2000)	*passim*
Russell v. Place, 21 F. Cas. 57 (C.C.N.D.N.Y. 1871) (No. 12,161)	18
St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742 (1993)	12

Cited Authorities

	Page
Sulzer Carbomedics, Inc. v. Oregon Cardo-Devices, Inc., 257 F.3d 449 (5th Cir. 2001)	16
Tyler v. RE/MAX Mountain States, Inc., 232 F.3d 808 (10th Cir. 2000)	15
West v. Nabors Drilling USA, Inc., 330 F.3d 379 (5th Cir. 2003)	16
Watt v. Watt, (1905) App. Cas. 115	20
Constitutional Provisions:	
U.S. CONST. AMEND. VII	2, 19
Statutes:	
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1331	3
42 U.S.C. § 2000e-2(a)(1)	1, 2
43 U.S.C. § 2000e-3(a)	2

Cited Authorities

Page

Journals:

Suja A. Thomas, *Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment*, 64 OHIO ST. L.J. 731 (2003) ..... *passim*

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Fifth Circuit Dated June 16, 2005 ..... 1a

Appendix B — Plaintiff's Conditional (i.e., Without Intention To Waive Appeal) Notice Of Acceptance Of Remittitur Filed April 13, 2004 ..... 14a

Appendix C — Order On Plaintiff's Emergency Motion To Reconsider Of The United States District Court For The Eastern District Of Texas, Beaumont Division Dated April 6, 2004 And Filed April 7, 2004 ..... 16a

Appendix D — Final Judgment Of The United States District Court For The Eastern District Of Texas, Beaumont Division Dated And Filed April 2, 2004 ..... 20a

Appendix E — Memorandum And Order On Attorney's Fees, Motion For New Trial, And Remittitur Of The United States District Court For The Eastern District Of Texas, Beaumont Division Dated And Filed April 2, 2004 ..... 22a

Appendix F — Memorandum And Order Of The United States District Court For The Eastern District Of Texas, Beaumont Division Dated February 18, 2004 And Filed February 19, 2004 ..... 32a

Appendices

Page

Appendix G — Verdict Of The Jury Of The United States District Court For The Eastern District Of Texas, Beaumont Division Filed February 5, 2004 ..... 47a

Appendix H — Order Of The United States Court Of Appeals For The Fifth Circuit Denying Petition For Rehearing Filed July 13, 2005 ..... 56a